

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

VENCIL C. GREEN,

Plaintiff,

v.

VAL LACEBAL, et al.,

Defendants.

No. 2:21-cv-01636 DAD DB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action under 42 U.S.C. § 1983. Plaintiff claims that defendants retaliated against him for filing grievances and civil suits, in violation of the First Amendment. Presently before the court is defendants' motion to dismiss (ECF No. 34) and plaintiff's first amended complaint (ECF No. 37). For the reasons set forth below, the undersigned will recommend that defendants' motion be granted only as to plaintiff's claim for damages against defendants in their official capacities. It will also order that plaintiff's first amended complaint be stricken from the docket, and grant plaintiff the option to proceed on the original complaint or seek leave to file an amended complaint.

MOTION TO DISMISS

I. Background

Plaintiff initiated this action by filing a complaint. (ECF No. 1.) This court determined that plaintiff had pleaded a cognizable First Amendment retaliation claim and plaintiff elected to

1 proceed on this claim, voluntarily dismissing all other claims. (ECF Nos. 9, 11.) On August 3,
2 2022, the court stayed the case while the matter was referred to the Post-Screening Alternative
3 Dispute Resolution Project. (ECF No. 21.) Defendants subsequently requested to opt out of the
4 project. (ECF No. 32.) The court granted their request and ordered them to file a response to
5 plaintiff's complaint within 60 days. (ECF No. 33.)

6 On April 14, 2023, defendants filed a timely motion to dismiss. (ECF No. 34.) Plaintiff
7 filed an opposition on April 25, and defendants filed a reply on May 3. (ECF Nos. 35, 36.)

8 **II. Allegations in the complaint**

9 Plaintiff states that, at all relevant times, he was a prisoner at Mule Creek State Prison
10 (“MCSP”). (ECF No. 1 at 1.) Plaintiff names Prison Industry Authority (“PIA”) supervisor Val
11 Lacebal and PIA manager Kevin Molle as defendants in this action, in their official and
12 individual capacities. (Id. at 2–3.)

13 On an unstated date in June 2021, plaintiff’s correctional counselor informed defendant
14 Lacebal that plaintiff was approved for placement in the PIA’s fabrics department. (Id. at 6.) On
15 June 18, 2021, plaintiff contacted defendant Lacebal because he was not interviewed or assigned
16 to the fabrics department. (Id.) Defendant Lacebal allegedly informed plaintiff that he was
17 instructed by defendant Molle to not hire plaintiff “because of all [his] past grievances and civil
18 suits...against P.I.A Staff.” (Id. at 6–7.)

19 Plaintiff alleges defendant Molle and defendant Lacebal retaliated against plaintiff in
20 response to his prison grievances and civil suits by barring plaintiff from getting a job in the
21 fabrics department. (Id. at 8.) Plaintiff requests relief in the form of a declaratory judgment,
22 monetary damages, and the filing fee cost. (Id. at 14.)

23 **III. Motion to Dismiss**

24 Defendants assert immunity under the Eleventh Amendment because plaintiff has sued
25 them in their official capacity, in addition to their personal capacity, and sought monetary
26 damages. (ECF No. 34 at 3.) They do not cite any additional grounds for dismissal. They ask
27 the court to dismiss the case “to the extent that it seeks money damages from Defendants in their
28 official capacities.” (ECF No. 34 at 3.)

1 In his opposition, plaintiff “agrees that the Defendants cannot be sued in their official
2 capacity under the Eleventh Amendment,” and requests “that in the interest of justice that [sic]
3 only this aspect of the claim be dismissed while simultaneously the suit against Defendants in
4 their own individual capacity for punitive damages prevail.” (ECF No. 35 at 3.)

5 In their reply, defendants contend that plaintiff “fail[ed] to articulate why the complaint
6 should not be dismissed to the extent that it seeks damages from Defendants in their official
7 capacities.” (ECF No. 34 at 3.) They note that plaintiff conceded that the Eleventh Amendment
8 bars him from suing defendants in their official capacities. (*Id.*)

9 **IV. Legal Standards**

10 **A. Rule 12(b)(6)**

11 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for motions to dismiss for
12 “failure to state a claim upon which relief can be granted.” In considering a motion to dismiss
13 pursuant to Rule 12(b)(6), the court must accept as true the allegations of the complaint in
14 question, *Erickson v. Pardus*, 551 U.S. 89 (2007), and construe the pleading in the light most
15 favorable to the plaintiff. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969); *Meek v. County of*
16 *Riverside*, 183 F.3d 962, 965 (9th Cir. 1999). To survive dismissal for failure to state a claim, a
17 pro se complaint must contain more than “naked assertions,” “labels and conclusions” or “a
18 formulaic recitation of the elements of a cause of action.” *Bell Atlantic Corp. v. Twombly*, 550
19 U.S. 544, 555-57 (2007). In other words, “[t]hreadbare recitals of the elements of a cause of
20 action, supported by mere conclusory statements do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662,
21 678 (2009). Furthermore, a claim upon which the court can grant relief must have facial
22 plausibility. *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads
23 factual content that allows the court to draw the reasonable inference that the defendant is liable
24 for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

25 A motion to dismiss for failure to state a claim should not be granted unless it appears
26 beyond doubt that the plaintiff can prove no set of facts in support of his claims which would
27 entitle him to relief. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). In general, pro se
28 pleadings are held to a less stringent standard than those drafted by lawyers. *Haines v. Kerner*,

1 404 U.S. 519, 520 (1972). The court has an obligation to construe such pleadings liberally. Bretz
2 v. Kelman, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en banc). However, the court's liberal
3 interpretation of a pro se complaint may not supply essential elements of the claim that were not
4 pled. Ivey v. Bd. of Regents of Univ. of Alaska, 673 F.2d 266, 268 (9th Cir. 1982). In ruling on
5 a motion to dismiss pursuant to Rule 12(b)(6), the court "may generally consider only allegations
6 contained in the pleadings, exhibits attached to the complaint, and matters properly subject to
7 judicial notice." Outdoor Media Grp., Inc. v. City of Beaumont, 506 F.3d 895, 899 (9th Cir.
8 2007) (citation and quotation marks omitted).

9 **B. Eleventh Amendment**

10 The Eleventh Amendment states: "The Judicial power of the United States shall not be
11 construed to extend to any suit in law or equity, commenced or prosecuted against one of the
12 United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S.
13 Const. amend. XI. "The Eleventh Amendment bars claims for damages against a state official
14 acting in his or her official capacity." Mitchell v. Washington, 818 F.3d 436, 442 (9th Cir. 2016).

15 However, it does not bar suits for damages brought under 42 U.S.C. § 1983 against state
16 officials sued in their personal capacity. Hafer v. Melo, 502 U.S. 21, 25–27 (1991). Section 1983
17 provides:

18 Every person who, under color of any statute, ordinance, regulation, custom, or
19 usage, of any State or Territory or the District of Columbia, subjects, or causes to
20 be subjected, any citizen of the United States or other person within the
21 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
22 secured by the Constitution and laws, shall be liable to the party injured...

23 42 U.S.C. § 1983. The Supreme Court has held that "state officials, sued in their individual
24 capacities, are 'persons' within the meaning of § 1983." Hafer, 502 U.S. at 31. "The Eleventh
25 Amendment does not bar such suits, nor are state officers absolutely immune from personal
26 liability under § 1983 solely by virtue of the 'official' nature of their acts." Id.

27 Additionally, "the Eleventh Amendment does not bar actions seeking only prospective
28 declaratory or injunctive relief against state officers in their official capacities." Los Angeles

Cnty. Bar Ass'n v. Eu, 979 F.2d 697, 704 (9th Cir. 1992). It also does not bar suits seeking declaratory or injunctive relief brought against state defendants in their personal capacities. See Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 269 (1997).

V. Analysis

Defendants move to dismiss plaintiff's claim for damages against them in their official capacity because it is barred by sovereign immunity under the Eleventh Amendment. (ECF No. ECF No. 34 at 3). Plaintiff does not oppose dismissal of his official capacity claim for damages. (ECF No. 35 at 3.)

Plaintiff's official capacity claim for damages is barred by the Eleventh Amendment. See
Kentucky v. Graham, 473 U.S. 159, 169–70 (1985). Accordingly, the undersigned recommends
that the motion to dismiss be granted as to plaintiff's official capacity claim for damages. The
action should be permitted to proceed as to plaintiff's claim for damages against defendants in
their personal capacities, and as to his request for a declaratory judgment against defendants in
their official and personal capacities.

15 As it is recommended that the official capacity claim for damages be dismissed as barred
16 by the Eleventh Amendment, and as the original complaint also sought damages from defendants
17 in their individual capacities, plaintiff is not required to amend his complaint. However, as
18 discussed further below, the court will grant plaintiff the opportunity to file a motion to amend the
19 complaint.

FIRST AMENDED COMPLAINT

21 Defendants filed the motion to dismiss on April 14. (ECF No. 34.) Briefing on the
22 motion was completed on May 3. (ECF No. 36.) Plaintiff filed the first amended complaint on
23 May 9.¹ (ECF No. 37.)

24 Plaintiff's first amended complaint repeats the allegations of the original complaint. (See
25 *id.*) There appear to be only two differences between the original complaint and the first

²⁷ ²⁸ ¹ Under the prison mailbox rule, a document is deemed served or filed on the date a prisoner signs the document and gives it to prison officials for mailing. See Houston v. Lack, 487 U.S. 266, 276 (1988) (establishing the prison mailbox rule); Campbell v. Henry, 614 F.3d 105, 1059 (9th Cir. 2010) (applying the mailbox rule to both state and federal filings by incarcerated inmates).

1 amended complaint. First, plaintiff included attachments with the original complaint, but does
2 not appear to have included them with the first amended complaint. (ECF No. 1 at 15–23.)
3 Second, he sued defendants in their official and individual capacities in the original complaint,
4 but names the defendants in their individual capacities in the amended complaint. (ECF No. 1 at
5 3; ECF No. 37 at 3.)

6 “Rule 15(a)(1) provides that within twenty-one days after service of a responsive pleading
7 or a motion to dismiss, a ‘party may amend its pleading once as a matter of course.’” Hernandez
8 v. Trate, No. 1:22-cv-01115-AWI-SAB-HC, 2023 WL 2839337, at *2 (E.D. Cal. Apr. 7, 2023)
9 (quoting Fed. R. Civ. P. 15). Outside this time frame, a plaintiff may amend his complaint “only
10 with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2).

11 District courts “have inherent power to control their docket.”” Ready Transp., Inc. v.
12 AAR Mfg., Inc., 627 F.3d 402, 404 (9th Cir. 2010) (quoting Atchison, Topeka & Santa Fe Ry. v.
13 Hercules, Inc., 146 F.3d 1071, 1074 (9th Cir. 1998)). This power includes the ability to “strike
14 material from the docket . . . reflecting procedural impropriety or lack of compliance with court
15 rules or orders.”” Singh v. Cissna, No. 1:18-cv-00782-SKO, 2018 WL 6812503, at *9 (E.D. Cal.
16 Dec. 27, 2018) (quoting Jones v. Metro. Life Ins. Co., No. C-08-03971-JW (DMR), 2010 WL
17 4055928, at *6 (N.D. Cal. Oct. 15, 2010)).

18 Here, plaintiff filed the amended complaint twenty-five days after defendants filed the
19 motion to dismiss. He was therefore required to obtain defendants’ written consent or leave from
20 the court before filing his amended complaint. Fed. R. Civ. P. 15(a)(2). He did not request
21 permission from the court, and there is no indication in the amended complaint or any other filing
22 that he obtained defendants’ written consent. The court will therefore order that it be stricken
23 from the docket.

24 For reasons discussed above, plaintiff does not need to amend the complaint for his
25 individual capacity claim for damages to proceed. Plaintiff will be given the option to proceed on
26 the original complaint, or to file a motion to amend his complaint. Within thirty (30) days of the
27 date of this order plaintiff shall notify the court of how he wishes to proceed. If plaintiff chooses
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1 to amend the complaint, he must file: (1) a motion for leave to amend the complaint, and (2) a
2 copy of the proposed amended complaint.

3 Plaintiff is advised that any amended complaint containing new factual allegations and
4 claims must be screened by the court to determine whether it states a cognizable claim for relief,
5 which could further prolong proceedings. See 28 U.S.C. § 1915A.

6 **CONCLUSION**

7 For the foregoing reasons, IT IS HEREBY ORDERED as follows:

- 8 1. That the Clerk of the Court strike the first amended complaint (ECF No. 37) from the
9 docket.
- 10 2. Plaintiff may, but is not required to, amend the complaint. Within thirty (30) days of the
11 date of this order plaintiff shall notify the court of how he wishes to proceed. If he
12 chooses to amend the complaint, he must submit a motion for leave to amend the
13 complaint and a copy of the proposed amended complaint. The proposed amended
14 complaint must comply with the requirements of the Civil Rights Act, the Federal Rules
15 of Civil Procedure, and the Local Rules of Practice; the proposed amended complaint
16 must bear the docket number assigned this case and must be clearly labeled “First
17 Amended Complaint.”
- 18 3. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint form
19 used in this district.

20 IT IS HEREBY RECOMMENDED that the motion to dismiss (ECF No. 39) be granted as
21 to plaintiff’s claim for damages against defendants in their official capacity.

22 These findings and recommendations will be submitted to the United States District Judge
23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days
24 after being served with these findings and recommendations, any party may file written
25 objections with the court and serve a copy on all parties. The document should be captioned
26 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
27 objections shall be filed and served within seven days after service of the objections. The parties
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1 are advised that failure to file objections within the specified time may result in waiver of the
2 right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: June 15, 2023

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DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE